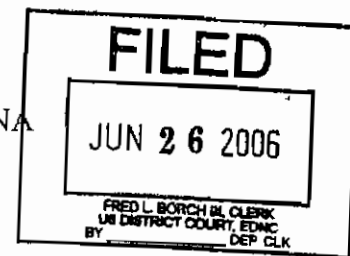


**CONTAINS
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:04-CR-211-1-BO



UNITED STATES OF AMERICA,)
)
 v.)
)
 DAVID A. PASSARO,)
)
 Defendant.)
 _____)

ORDER
Under Seal

FILED WITH THE
COURT SECURITY OFFICER
CSO: [Signature]
DATE: 6/26/06

This matter is before the Court on Defendant's Modified Notice of Intention to Disclose Classified Information During Jury Trial. Upon the Government's motion and in accordance with Section 6(a) of the Classified Information Procedures Act ("CIPA"), an *in camera* hearing was held to determine the admissibility, use, and relevance of the classified information specified in Defendant's Modified Notice.¹ At the conclusion of this hearing, which took place in Raleigh on March 22, 2006, the parties agreed to submit a proposed order to the Court which incorporated its rulings and the agreed upon substitutions for relevant classified information, and clarified any remaining issues of contention.²

The Court has since received the order prepared by the parties and carefully reviewed its

¹CIPA establishes a pretrial procedure for ruling upon the admissibility of classified information. *United States v. Smith*, 780 F.2d 1102, 1105 (4th Cir. 1985). Section 5(a) mandates that a criminal defendant notify the government and the court if he reasonably expects to disclose classified information during his trial or any pretrial proceeding. 18 U.S.C. app. 3 § 5(a). Once such notice is given, the government may then request a hearing under Section 6(a) to determine "the use, relevance, or admissibility" of the classified information. *Id.* § 6(a). This hearing must be held *in camera* if the Attorney General certifies that a public proceeding would result in the disclosure of classified information. *Id.*

²Section 6(a) further dictates that "[a]s to each item of classified information, the court shall set forth in writing the basis for its determination." *Id.*

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contents. Accordingly, mindful of Defendant's constitutional rights and the Government's interest in safeguarding the proffered classified information, the Court makes the following rulings with respect to the numbered paragraphs in Defendant's Modified Notice:

<u>PARAGRAPH</u>	<u>RULING</u>
1.	Admissible with the following substitutions ³ : "Robert Stevens" for [REDACTED] [REDACTED] and [REDACTED] for [REDACTED]
2.	Admissible with the following substitutions: "Robert Stevens" for references to [REDACTED] [REDACTED] for [REDACTED] and "Steven Jones" for [REDACTED]
3.	Not classified
4.	Not classified
5.	Not classified
6.	Not classified
7.	Not classified

³CIPA Section 6(c)(1) permits the government, "upon any determination by the court authorizing the disclosure of specified classified information," to move that "in lieu of the disclosure of such specific classified information, the court order:

- (A) the substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove; or
- (B) the substitution for such classified information of a summary of the specific classified information."

18 U.S.C. app. 3 § 6(c)(1)(A)-(B). The court must grant the motion if the substitution "provide[s] the defendant with substantially the same ability to make his defense as would disclosure of the specified classified information." *Id.* The Government in this case has chosen to seek numerous substitutions with Defendant's input. The Court finds that these substitutions convey the relevant facts in an unclassified fashion and adequately serve the interests at stake.

8. Admissible with the following substitutions:
"Richard McDonald" for [REDACTED] and [REDACTED]
[REDACTED] redacted
9. Admissible with the following substitution⁴:
"Richard McDonald" for [REDACTED]
10. Not classified
11. Not classified
12. Not classified
13. Not classified
14. Not classified
15. Admissible (parties may offer the fact that Defendant was provided various aliases but must substitute his true name wherever aliases appear)
16. Admissible with the following substitution:
[REDACTED] for [REDACTED]
17. Admissible with the following summary:
[REDACTED]
18. Admissible with the following summary:
[REDACTED]
19. Government objection sustained (irrelevant and inadmissible)⁵
20. Government objection sustained (irrelevant and inadmissible)

⁴For the sake of clarity, substitute names appear in their full form throughout this Order.

⁵The standard of relevance applied for CIPA purposes is no different than the standard routinely applied to all cases under the Federal Rules of Evidence. Therefore, with respect to the classified information which the Court has deemed irrelevant and inadmissible, Defendant has simply failed to carry his burden of demonstrating relevance. *See* Fed. R. Evid. 402.

21. Government objection sustained (irrelevant and inadmissible)
22. Government objection sustained (irrelevant and inadmissible)
23. Not classified
24. Government objection sustained (irrelevant and inadmissible)
25. Not classified
26. Government objection sustained (irrelevant and inadmissible)
27. Admissible with the following substitutions:
"Richard Andrews" for [REDACTED] and reference to [REDACTED]
removed
28. Admissible with the following substitution:
"Randy Wilson" for [REDACTED]
29. Admissible with the following substitution:
"Robert Stevens" for [REDACTED]
30. Not classified
31. Not classified
32. Not classified
33. Not classified
34. Not classified
35. Not classified
36. Admissible with the following summary:
[REDACTED]

37. Admissible with the following summary:
[REDACTED]
38. Admissible with the following summary:
[REDACTED]
39. Not classified
40. Government objection sustained (irrelevant and inadmissible)
41. Government objection sustained (irrelevant and inadmissible)
42. Not classified
43. Admissible with the following substitution:
"Jim Phillips" for [REDACTED]
44. Admissible with the following substitution:
[REDACTED] redacted
45. Admissible with the following substitutions:
"Jeff Simpson" for [REDACTED] and "locations in Afghanistan other than Asadabad" for [REDACTED]
46. Admissible with the following substitution:
"Wahid" for [REDACTED]
47. Admissible with the following substitution:
[REDACTED] for [REDACTED]
48. Admissible with the following substitution:
[REDACTED] for [REDACTED]
49. Not classified

50. Not classified
51. Not classified
52. Not classified
53. Not classified
54. Not classified
55. Admissible with the following substitution:
"another location in Afghanistan" for [REDACTED]
56. Not classified
57. Not classified
58. Not classified
59. Admissible with following substitution:
"Robert Stevens" for [REDACTED]
60. Admissible with the following substitutions:
"Robert Stevens" for [REDACTED] and [REDACTED]
[REDACTED] for [REDACTED]
61. Admissible with the following substitutions:
"Robert Stevens" for [REDACTED] and [REDACTED] for
[REDACTED]
62. Admissible with the following substitution:
"Robert Stevens" for [REDACTED]
63. Admissible with the following substitution:
[REDACTED] for [REDACTED]
64. Admissible with the following substitutions:
"Robert Stevens" for [REDACTED] and [REDACTED]
[REDACTED] for [REDACTED]
65. Admissible with the following substitution:
[REDACTED] for [REDACTED]

66. Government objection sustained (irrelevant and inadmissible)
67. Government objection sustained (irrelevant and inadmissible)
68. Government objection sustained (irrelevant and inadmissible)
69. Government objection sustained (irrelevant and inadmissible)
70. Government objection sustained (irrelevant and inadmissible)
71. Government objection sustained (not a fact for trial)
72. Government objection sustained (not a fact for trial)
73. Government objection sustained (irrelevant and inadmissible)
74. Government objection sustained (irrelevant and inadmissible)
75. Government objection sustained (irrelevant and inadmissible)
76. Government objection sustained (irrelevant and inadmissible)
77. Government objection sustained (irrelevant and inadmissible)
78. Not classified
79. Not classified
80. Not classified
81. Not classified
82. Admissible with the following substitutions:
[REDACTED] for [REDACTED] and
[REDACTED] for [REDACTED]
83. Not classified
84. Not classified
85. Not classified
86. Not classified

87. Not classified
88. Not classified
89. Not classified
90. Admissible with the following summary:
[REDACTED]
91. Admissible with the following summary:
"After receiving the rocket fire, U.S. personnel attempted to determine who was behind the attacks."
92. Government objection sustained (irrelevant and inadmissible)
93. Government objection sustained (irrelevant and inadmissible)
94. Admissible with the following summary:
[REDACTED]
95. Admissible with the following substitution:
[REDACTED] for references to [REDACTED]
96. Government objection sustained (irrelevant and inadmissible)
97. Government objection sustained (irrelevant and inadmissible)
98. Government objection sustained (irrelevant and inadmissible)
99. Government objection sustained (irrelevant and inadmissible)
100. Government objection sustained (irrelevant and inadmissible)
101. Government objection sustained (irrelevant and inadmissible)
102. Government objection sustained (irrelevant and inadmissible)
103. Government objection sustained (irrelevant and inadmissible)

104. Government objection sustained (irrelevant and inadmissible)
105. Government objection sustained (irrelevant and inadmissible)
106. Not classified
107. Not classified
108. Not classified
109. Not classified
110. Admissible with the following substitution:
"Richard Andrews" for [REDACTED]
111. Not classified
112. Not classified
113. Not classified
114. Admissible with the following summary:
[REDACTED]
115. Admissible with the following substitution:
[REDACTED] for [REDACTED]
116. Admissible with the following substitution:
[REDACTED] for [REDACTED]
117. Not classified
118. Not classified
119. Not classified
120. Not classified
121. Admissible with the following substitutions:
[REDACTED] for [REDACTED] and [REDACTED] for [REDACTED]

122. Admissible with the following substitutions:
"Steven Jones" for [REDACTED] and [REDACTED] for [REDACTED]
[REDACTED]
123. Admissible with the following substitution:
[REDACTED] for [REDACTED]
124. Not classified
125. Not classified
126. Not classified
127. Not classified
128. Not classified
129. Not classified
130. Admissible with the following substitution⁶:
"Steven Jones" for [REDACTED] and [REDACTED] for [REDACTED]
[REDACTED]
131. Not classified
132. Not classified
133. Not classified
134. Not classified
135. Not classified
136. Not classified
137. Not classified

⁶In an abundance of caution and for the purpose of consistency, the Court has substituted "Steven Jones" wherever [REDACTED] occurs in Defendant's Modified Notice, regardless of whether the substitution was proposed by the parties. In addition, the Court has replaced any name which the parties have agreed to replace with the designated substitute name, assuming any inconsistency in the proposed order is the result of mere oversight.

138. Not classified
139. Not classified
140. Not classified
141. Not classified
142. Not classified
143. Not classified
144. Not classified
145. Not classified
146. Not classified
147. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
148. Not classified
149. Not classified
150. Not classified
154. Not classified
155. Admissible with the following substitutions:
[REDACTED] for references to [REDACTED]
156. Admissible with the following substitutions:
"Richard Andrews" for [REDACTED] and [REDACTED]
[REDACTED] for [REDACTED]
157. Not classified
158. Not classified
159. Not classified

160. Not classified
161. Not classified
162. Admissible with the following summary:
"Steven Jones, the supervising CIA officer at Asadabad Firebase, denied ever striking or using physical force against Wali in a later report to the supervising CIA office for Afghanistan."
163. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
164. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
165. Not classified
166. Not classified
167. Not classified
168. Not classified
169. Not classified
170. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
171. Not classified
172. Not classified
173. Not classified
174. Not classified
175. Not classified
176. Not classified
177. Not classified
178. Not classified

179.	Not classified
180.	Not classified
181.	Not classified
182.	Not classified
183.	Not classified
184.	Not classified
185.	Not classified
186.	Not classified
187.	Not classified
188.	Not classified
189.	Not classified
190.	Not classified
191.	Not classified
192.	Not classified
193.	Not classified
194.	Not classified
195.	Not classified
196.	Not classified
197.	Not classified
198.	Not classified
199.	Not classified
200.	Not classified

201. Not classified
202. Not classified
203. Not classified
204. Admissible with the following substitutions:
"Steven Jones" for [REDACTED] and [REDACTED] for [REDACTED]
[REDACTED]
205. Not classified
206. Not classified
207. Admissible with the following substitution:
[REDACTED] for [REDACTED]
208. Admissible with the following substitution:
[REDACTED] for [REDACTED]
209. Not classified
210. Admissible with the following substitution:
[REDACTED] for [REDACTED]
211. Not classified
212. Not classified
213. Not classified
214. Admissible with the following substitutions:
[REDACTED] for [REDACTED] and [REDACTED]
[REDACTED] for [REDACTED]
215. Admissible with the following substitution:
[REDACTED] for [REDACTED]
216. Government objection sustained (irrelevant and inadmissible)
217. Government objection sustained (irrelevant and inadmissible)
218. Government objection sustained (irrelevant and inadmissible)

219. Government objection sustained (irrelevant and inadmissible)
220. Government objection sustained (irrelevant and inadmissible)
221. Not classified
222. Not classified
223. Admissible with the following substitution:
[REDACTED] for [REDACTED]
224. Admissible with the following substitutions:
[REDACTED] for first reference to [REDACTED]
[REDACTED] for [REDACTED]
and [REDACTED] for second reference to [REDACTED]
225. Admissible with the following substitution:
[REDACTED] for [REDACTED]
226. Not classified
227. Admissible with the following substitutions:
[REDACTED] for [REDACTED]
and [REDACTED] for [REDACTED]
228. Admissible with the following substitutions:
[REDACTED] for [REDACTED] and [REDACTED]
229. Admissible with the following substitution:
[REDACTED] for [REDACTED]
- 229(a). Admissible with the following substitution:
"elsewhere in Afghanistan" for [REDACTED]
- 229(b). Admissible with the following substitutions:
[REDACTED] for [REDACTED]
[REDACTED] for [REDACTED] and [REDACTED]
[REDACTED] for references to [REDACTED]
- 229(c). Admissible with the following substitutions:
[REDACTED] for [REDACTED] and [REDACTED]
[REDACTED] for [REDACTED]

- 229(d). Not classified
230. Admissible with the following substitution:
[REDACTED] for [REDACTED]
- 231(a). Admissible with the following substitutions:
"Steven Jones" for [REDACTED] redacted, and [REDACTED]
[REDACTED] for [REDACTED]
- 231(b). Admissible with the following substitution:
[REDACTED] for [REDACTED]
- 231(c). Admissible with the following substitutions:
[REDACTED] redacted and [REDACTED] for
references to [REDACTED]
- 231(d). Admissible with the following substitution:
"Steven Jones" for [REDACTED]
- 231(e). Admissible with the following substitution:
[REDACTED] for [REDACTED]
- 231(f). Admissible with the following substitutions:
[REDACTED] for [REDACTED]
and [REDACTED] for [REDACTED]
232. Admissible with the following substitutions:
[REDACTED] for [REDACTED]
and [REDACTED] for [REDACTED]
233. Admissible with the following substitutions:
[REDACTED] for [REDACTED]
[REDACTED] for [REDACTED] and
[REDACTED] for [REDACTED]
234. Admissible with the following substitution:
[REDACTED] for [REDACTED]
235. Not classified

236. Admissible with the following substitutions:
[REDACTED] for [REDACTED]
and [REDACTED] for [REDACTED]
237. Government objection sustained (irrelevant and inadmissible)
238. Not classified
239. Not classified
240. Government objection sustained (irrelevant and inadmissible)
241. Government objection sustained (irrelevant and inadmissible)
242. Government objection sustained (irrelevant and inadmissible)
243. Not classified
244. Government objection sustained (irrelevant and inadmissible)
245. Government objection sustained (irrelevant and inadmissible)
246. Government objection sustained (irrelevant and inadmissible)
247. Government objection sustained (irrelevant and inadmissible)
248. Government objection sustained (irrelevant and inadmissible)
249. Government objection sustained (irrelevant and inadmissible)
250. Government objection sustained (irrelevant and inadmissible)
251. Admissible with the following substitution:
[REDACTED] for [REDACTED]
252. Admissible with the following substitution:
[REDACTED] redacted
253. Inadmissible (inadequate notice of classified information)
254. Admissible with the following substitution:
[REDACTED]

255. Not classified
256. Not classified
257. Not classified
258. Not classified
259. Admissible with the following substitution:
[REDACTED] for [REDACTED]
260. Admissible with the following summary:
"On July 14, 2003, the Director of the CIA sent a message to CIA personnel."
261. Government objection sustained (irrelevant and inadmissible)
262. Not classified
263. Not classified
264. Admissible with the following substitution:
[REDACTED] for [REDACTED]
265. Admissible with the following substitution:
[REDACTED] for [REDACTED]
266. Admissible with the following substitution:
[REDACTED] for [REDACTED]
267. Not classified
268. Not classified
269. Not classified
270. Not classified
271. Not classified
272. Not classified

273. Not classified
274. Not classified
275. Not classified
276. Admissible with following substitution:
"Steven Jones" for [REDACTED]
277. Admissible with the following substitution:
[REDACTED] for [REDACTED]
278. Not classified
279. Not classified
280. Government objection sustained (not a notice of classified information)
281. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
282. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
283. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
284. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
285. Admissible with the following substitutions:
"Steven Jones" for [REDACTED] and [REDACTED] for [REDACTED]
[REDACTED]
286. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
287. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
288. Admissible with the following substitution:
"Steven Jones" for [REDACTED]

289. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
290. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
291. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
292. Admissible with the following substitution:
"Steven Jones" for [REDACTED]
293. Admissible with the following substitution:
[REDACTED] for [REDACTED]
294. Admissible with the following substitution:
[REDACTED] for [REDACTED]
295. Government objection sustained (irrelevant and inadmissible)
296. Not classified
297. Government objection sustained (irrelevant and inadmissible)
298. Government objection sustained (irrelevant and inadmissible)
299. Government objection sustained (irrelevant and inadmissible)
300. Government objection sustained (irrelevant and inadmissible)
301. Government objection sustained (irrelevant and inadmissible)
302. Government objection sustained (irrelevant and inadmissible)
303. Government objection sustained (irrelevant and inadmissible)
304. Not classified
305. Not classified
306. Admissible with the following substitution:
[REDACTED] for [REDACTED]

307. Not classified
308. Not classified
309. Not classified
310. Not classified
311. Admissible with the following substitution:
[REDACTED] for [REDACTED]
312. Not classified
313. Not classified
314. Not classified
315. Not classified
316. Not classified
317. Not classified
318. Not classified
319. Not classified
320. Not classified
321. Not classified
322. Not classified
323. Not classified
324. Not classified
325. Not classified
326. Admissible with the following substitution:
"Matthew Mathers" for [REDACTED]

327. Admissible with the following substitution:
[REDACTED] for [REDACTED]
328. Not classified
329. Not classified
330. Government objection sustained (not a notice of classified information)
331. Admissible with the following substitutions:
"Matthew Mathers" for references to [REDACTED]
332. Admissible with the following substitution:
"Matthew Mathers" for [REDACTED]
333. Admissible with the following substitutions:
"Matthew Mathers" for [REDACTED] "Richard Andrews" for [REDACTED]
[REDACTED] for [REDACTED] and [REDACTED]
[REDACTED] for references to [REDACTED]
334. Admissible with the following substitutions:
"Matthew Mathers" for [REDACTED] for [REDACTED]
[REDACTED] for references to [REDACTED] and [REDACTED]
[REDACTED] for references to [REDACTED]
335. Admissible with the following substitution:
"Matthew Mathers" for [REDACTED]
336. Admissible with the following substitution:
"Matthew Mathers" for [REDACTED]
337. Admissible with the following substitutions:
"Matthew Mathers" for references to [REDACTED] and "Richard Andrews" for [REDACTED] and [REDACTED]
338. Admissible with the following substitution:
"Matthew Mathers" for references to [REDACTED]

In addition, the Government presented, and the Court approves, three summaries of

classified documents which the Government conditionally approved for declassification at trial.⁷

SO ORDERED.

This the 22 day of June, 2006.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

⁷This Order is the sole and exclusive ruling of the Court regarding any and all classified information intended to be disclosed at trial. It does not cover any other classified information proffered to the Court during the course of pretrial motions but omitted from Defendant's Modified Notice. As previously noted, a defendant who intends to disclose classified information must provide proper notice under CIPA. *See Smith*, 780 F.2d at 1105 ("A defendant is forbidden from disclosing any such information absent the giving of notice").